

REMARKS

1. The Applicant acknowledges the Examiner's action of making the restriction final.
2. The Examiner found the IDS filed on June 28, 2004 to be non-compliant due to an typographical error in a patent number and that one document was no available on PAIR. Accordingly, the Applicant submits a corrected IDS and provides the Examiner with a copy of the unavailable document.
3. The Examiner objected to the specification as certain reference numerals were not shown in the drawings. Accordingly, the Applicant submits a proposed drawing correction for the Examiner's consideration. No new matter has been added.
4. The Examiner rejected claims 1-11 under 35 U.S.C. 112 for being indefinite. The Applicant here by amends claim 1 adopting the Examiner's suggestion for active voice claim structure.
5. The Examiner rejected claims 1, 2, 4-7, and 11 under 35 U.S.C. 103(a) as being unpatentable over Wernicke et al. in view of Trailer, and rejected claims 3 and 8-10 under 35 U.S.C. 103(a) as being unpatentable over Wernicke et al. in view of Trailer and further in view of Atlee III. The Applicant respectfully traverses these rejections.
6. Wernicke discloses stimulation of the vagal nerve to control a monitored EEG signal. Trailer discloses esophageal stimulation to pace the heart. Trailer does not disclose stimulating the vagal nerve. Indeed, stimulating the vagal nerve will slow or stop the heart, and thus, combining Wernicke with Trailer would be at odds with the objective of Trailer to achieve controlled beating of the heart. The Applicant respectfully submits that one of ordinary skill in the art would not combine Wernicke with Trailer, and therefore, the Examiner has not made a *prima facia* 103 rejection.

7. Assuming, *arguendo*, that the combination of Wernicke and Trailer was a proper Section 103 rejection, neither Wernicke or Trailer disclose performing a medical procedure. The Examiner, however, takes the position that recited medical procedure is the stimulation of the vagus nerve itself. Accordingly, claim 1 has been amended to recite that the medical procedure is performed on the heart. Performing a medical procedure on the heart is not shown or suggestion by Wernicke or Trailer singularly or in combination. The Applicant respectfully submits that claim 1 is allowable as amended, and since the remaining claims (ultimately) depend from claim 1, the Applicant respectfully submits that claim 2-11 are allowable as well.
8. The Applicant adds new claims 40-51. Regarding claim 40, the medical procedure on the heart is recited as being invasive. Regarding claim 46, the medical procedure is recited as being an MRI or CAT scan of the heart. These recitations are fully supported by the specification and are allowable over the cited art for the same reasons as claim 1. The Applicant respectfully requests allowance of all pending claims.

Conclusion

In view of Applicant's amendments and remarks, it is respectfully submitted that the Examiner's rejections have been overcome. Accordingly, Applicants respectfully submit that the application, as amended, is now in condition for allowance, and such allowance is therefore earnestly requested. Should the Examiner have any questions or wish to further discuss this application, Applicants request that the Examiner contact the Applicants' attorneys at the below-listed telephone number.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent abandonment on this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

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